

CITY OF TIGARD, OREGON

RESOLUTION NO. 02- 73

A RESOLUTION OF THE CITY OF TIGARD APPROVING A REVISED
INTERGOVERNMENTAL AGREEMENT FOR THE METROPOLITAN AREA
COMMUNICATIONS COMMISSION (MACC).

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC", is an intergovernmental commission formed in April 1980 under ORS Chapter 190, with Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin as current members; and

WHEREAS, the City of Tigard is a member of MACC; and

WHEREAS, this Intergovernmental Agreement has been amended many times since 1980; and

WHEREAS, in 2000 the Commission determined that the Agreement needed review due to the passage of time and changes in governance and technology over the 20-year history of the Commission, and thereafter the Commission appointed a Governance Committee to review the Agreement and to recommend any needed revisions; and

WHEREAS, the duly appointed Governance Committee met over a period of more than a year and presented a recommendation to the full Commission that a new Intergovernmental Agreement be approved and submitted to the MACC member jurisdictions; and

WHEREAS, the Governance Committee also recommended the adoption of new bylaws following approval of the new Agreement, and those bylaws were approved by the Commission by Resolution 2002-09 on September 13, 2002; and

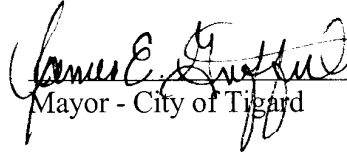
WHEREAS, the Commission at its September 13, 2002, meeting adopted Resolution 2002-08, attached hereto as Exhibit B, which approves the new Intergovernmental Agreement, and recommends that each of the member jurisdictions approve the Agreement by duly authorized enactment of each jurisdiction's governing body.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City hereby approves the new Intergovernmental Agreement, attached hereto as Exhibit A, and incorporated herein by this reference, subject to all the terms and conditions contained therein.

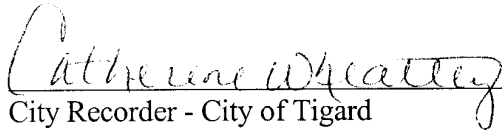
SECTION 2: This resolution is effective immediately upon passage.

PASSED: This 10th day of December 2002.



Mayor - City of Tigard

ATTEST:



City Recorder - City of Tigard

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**INTERGOVERNMENTAL AGREEMENT
METROPOLITAN AREA COMMUNICATIONS COMMISSION**

THIS AGREEMENT is made and entered into as of the below set forth date by and among the undersigned cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin, all municipal corporations of the State of Oregon, and Washington County, a county formed under the laws of the State of Oregon, (all parties hereafter referred to as “member jurisdictions”). This Agreement is made pursuant to ORS 190.003 to ORS 190.110, the general laws and constitution of the State of Oregon, and the laws and charters of the member units of local government.

Recitals:

- The Metropolitan Area Communications Commission (hereinafter, “MACC”) was formed in April 1980 to provide a common means for area local governments to jointly franchise for cable television services. The original member jurisdictions were: Banks, Beaverton, Cornelius, Forest Grove, Hillsboro, King City, Lake Oswego, Milwaukie, Sherwood, Tigard, Tualatin, and Washington County.
- In 1981, Durham joined MACC, and Milwaukie left to pursue franchising separately. Since 1981, the cities of Rivergrove (1983), North Plains (1984), Gaston (1989), and Wilsonville (1984) joined MACC. Sherwood and Wilsonville withdrew in 1999.
- In February 1981, the Commission issued a Request for Proposals seeking offers from cable television companies to jointly serve the member jurisdictions.
- In February 1982, Storer-Metro Communications was granted a franchise to serve the member jurisdictions.
- Between 1980 and 1999 a number of amendments were made to the original Intergovernmental Agreement to reflect the increased responsibilities of the Commission and other changes in the organization.
- In 1985, ownership of the franchise was transferred from Storer-Metro to Willamette Cable TV. Since then, the ownership and/or control of the franchise has been transferred twice, from Willamette to Columbia International in 1988, and to TCI Cablevision of Oregon in 1995. Control of TCI was transferred to AT&T Corp. in 1999. The franchise was renewed on February 1, 1999.
- In [June](#) 2000, the Commission appointed a Governance Committee to review the original Intergovernmental Agreement (as amended) and to recommend revisions.
- [AT&T Corp. received consent from MACC to merge with Comcast to form a new parent of TCI, AT&T Comcast Corporation.](#)
- On [September 13](#), 2002, the Commission recommended that its member jurisdictions approve the new Intergovernmental Agreement as contained herein.

Section 1. General Purposes of Agreement. To ratify the formation of MACC in 1980, to recognize its continuous existence as a joint commission of representatives from member jurisdictions, and to restate the original Agreement, pursuant to the authority set forth in ORS 190.003 through ORS 190.110 as well as local charters, ordinances and applicable laws. This Agreement is designed to fulfill the following objectives:

Pool the strengths of member jurisdictions in franchising communications and information services to best serve the public interest and make best use of the limited Public Rights of Way.

- A. Serve the public interest by encouraging competition in all areas of communications and information service technologies.
- C. Represent the views of consumers of communications services and advocate for the highest quality customer services.
- D. Provide for negotiation, administration, and regulation of communications and information services franchises and agreements for the member jurisdictions on a common, or individual, jurisdictional basis.
- E. Provide a coordinated and uniform response in working with the communications industry on franchise negotiation and administration.
- F. Speak as “one voice” to represent its members on issues of communications and information services.
- G. Provide a common forum for the joint study and discussion of communications issues and problems, and to develop practical solutions and alternatives.
- H. Provide an organization that remains flexible to meet the challenges of the changing communications and information services environment.

Section 2. Definitions.

Commission. The Board of Commissioners serving as the governing body of MACC.

Communication and Information Services. Cable television, telephony, broadband, including video, voice, or data transported between fixed points using facilities housed on, under, or over Public Rights of Way and other public property regardless of the technology employed.

Designated Access Provider. An entity selected by the Commission to provide Public, Education, or Governmental (PEG) Access services.

Franchise. A non-exclusive and revocable agreement for the construction and operation of a communication system using the Public Rights of Way. MACC is authorized to administer these agreements on behalf of its members.

Franchise Fee Revenue. Fees and costs or other fair and reasonable compensation charged for use of the Public Rights of Way, separate from, and in addition to, any and all federal, state, local, or member jurisdiction charges as may be levied, imposed, or due from a communications or information service provider, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of such services.

Grantee. The person to which a franchise is granted by member jurisdiction(s).

MACC. The organization, commissioners, officers, employees, and agents of the Metropolitan Area Communications Commission.

PEG Access. Public, Educational, and Governmental Access, collectively, for noncommercial use by institutions, organizations, groups and individuals in the MACC franchise community to acquire, create, receive, and distribute information via communications facilities.

Person. An individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company authorized to do business in the State of Oregon.

Personal Services. Work to be performed by a provider or providers to fulfill MACC operational and business needs and objectives.

Public Rights of Way. Includes, but is not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, public utility easements, including the subsurface under and air space over these areas, but does not include parks or parkland. This definition applies only to the extent of the local government's right, title, interest, or authority to grant a franchise to occupy and use such areas for communications facilities.

Section 3. Commission Creation and Powers. MACC is hereby created as a joint commission to carry out the specific purposes set forth in this Agreement. In carrying out the purposes of this Agreement, the Commission is vested with all the powers, rights, and duties relating to those functions and activities that are vested by law in each separate unit of local government, its officers and agencies, subject to specific limitations, if any, contained in this Agreement. "Law" as referred to in this section shall mean and include, federal laws and Constitution, Oregon laws and Constitution, as well as the charters, ordinances, and other regulations of each unit of local government. The Commission shall establish a set of Bylaws that will govern its operations.

Section 4. Governance, Voting, and Meetings

A. The Governing Body. A Board of Commissioners shall govern MACC. Each member jurisdiction shall select one representative to serve as its Commissioner. In addition, member jurisdictions are encouraged to appoint one alternative representative who may attend all meetings and act in the absence of the primary representative. Each member jurisdiction shall have one vote on any decision made by the Commission.

- B. Meetings and Voting. Commission meetings shall be conducted pursuant to the Oregon Public Meetings Law (ORS 192.610-192.710). Requirements for Commission meetings, quorums, and voting are contained in the Bylaws.
- C. Term of Office and Succession. Commission members shall be appointed to serve until their successors are appointed and assume their responsibilities, but shall serve at the pleasure of the governing body of the member jurisdiction appointing them. Member jurisdictions are responsible for filling their Commissioner positions. Officers of the Commission shall be specified in the Bylaws.
- D. Actions Requiring Unanimous Consent of All Member Jurisdictions. The following actions require the unanimous consent of all member jurisdictions:
- 1) Amendments to this Agreement;
 - 2) Adding new member jurisdictions to MACC;
 - 3) Withdrawal of a member jurisdiction from MACC;
 - 4) Abolishing MACC as an organization.
- E. Actions Requiring the Unanimous Consent of Affected Member Jurisdictions. Some decisions of the Commission will not affect all members. The following actions require the unanimous consent of affected member jurisdictions:
- 1) Granting, amending, renewing, or transferring franchises of affected member jurisdictions;
 - 2) Allocation of franchise fee revenues in accordance with Exhibits.
- F. In addition to other limitations that may be contained in this Agreement, no decision concerning the below listed or like subjects shall be made by the Board, unless a quorum is present, and a majority of those present and voting agree on a matter before it:
- 1) Any decision creating a monetary expense to a member jurisdiction;
 - 2) Any decision that would lead to the selection of a person to provide, by franchise or otherwise, an information or communication system for a particular member jurisdiction;
 - 3) Any decision that would provide a method for apportioning any revenues received by the Commission among the member jurisdictions of the Agreement; and
 - 4) Any decision concerning the adoption or supplementation of a budget.
- G. All other actions of the Commission and not specified herein are governed by the Bylaws, to the extent applicable.

Section 5. Financial Responsibilities.

- A. The Commission shall comply with applicable Oregon state and local laws as to budget preparation, expenditures and audit of its books and records. All books and records shall be open to inspection by any member unit of local government or its designate. The

public will have access to these records in accordance with the Oregon Public Records Law (ORS 192.005 to 192.170).

- B. The Commission has the discretion to establish purchasing rules, personnel policies, and administrative procedures, in addition to the Bylaws, to conduct MACC's daily business. This includes the ability to contract for services, sign leases, sign other agreements, and employ professional staff.
- C. Allocation of franchise fee revenues shall be in accordance with Exhibits.

Section 6. Duration of Agreement, Membership, Contracts for Services, Withdrawal, and Termination.

- A. Duration. The duration of this Agreement is perpetual and the Commission shall continue from year to year, subject to Subsection E.
- B. New Membership. The Commission may consider requests from jurisdictions to become members of MACC. An affirmative recommendation from the Commission and unanimous consent of all member jurisdictions is required.

The Commission will consider the following criteria in evaluating a request for MACC membership:

- 1) Common service provider;
- 2) Similarity of franchise agreement;
- 3) Geographic proximity to current members;
- 4) Level of services requested;
- 5) Current members should not incur any costs and there should be full cost recovery;
- 6) Potential benefits of new member to MACC; and
- 7) Willingness to support PEG Access allocation as required by a franchise.

- C. Contracts for Services. The Commission may also consider requests from jurisdictions to contract with MACC for services.

The Commission will consider the following criteria in evaluating whether to approve a request for a MACC service contract:

- 1) Common service provider;
- 2) Similarity of franchise agreement;
- 3) Geographic proximity to current members;
- 4) Level of services requested;
- 5) Current members should not incur any costs and there should be full cost recovery; and
- 6) Potential benefits of contracting jurisdiction to MACC.

- D. Withdrawal from Membership. Member jurisdictions may not withdraw from membership in MACC without the unanimous consent of the remaining members, per Section 4.D. The Commission will require member jurisdictions wishing to withdraw from membership to provide a minimum of one hundred and eighty (180) days written

notice to the Commission. Such notice will state the reasons for requested withdrawal and the date requested for the withdrawal to become effective. Withdrawals without consent may subject the withdrawing member to civil penalties, and other remedies, from the Commission and the remaining members.

Generally, the Commission will not consent to withdrawals occurring during the following periods:

- 1) During the last eighteen (18) month period of any common franchise agreement to which they are a party;
- 2) Within the first eighteen (18) month period following the renewal of any common franchise agreement to which they are a party.

Any net cash due and owing to the withdrawing member shall be paid within thirty (30) days of the effective date of the withdrawal. Net cash is defined as the pro-rata share of franchise fee revenues accrued, or which have accrued, as of the effective date of the withdrawal, minus the present value of any MACC capital asset(s) held on the premises of and proposed to be retained by the withdrawing member (e.g. built-in television equipment funded by MACC grant). MACC capital assets, other than those held on the premises of the withdrawing jurisdiction, and which are owned and/or directly used for MACC operations, are excluded from consideration for this calculation. In applying this provision, the Commission shall consider the value of the capital asset(s) held by the jurisdiction compared to the amount due to the jurisdiction for settlement before approval of the withdrawal.

- E. Termination of Commission. The Commission may be terminated by mutual agreement of all of the parties, subject to contractual obligations in existence at said time. As part of this process, the Commission shall divide MACC's remaining prorated funds and assets among the remaining parties after payment of all debts.

Section 7. General Terms.

- A. Severability. The terms of this Agreement are severable and a determination by an appropriate body having jurisdiction over the subject matter of this Agreement that results in the invalidity of any part shall not affect the remainder of the Agreement.
- B. Interpretation. The terms and provisions of this Agreement shall be liberally construed in accordance with the general purposes of this Agreement.
- C. Effective Date. This Agreement shall become effective upon acceptance by all the MACC member jurisdictions of this Agreement.
- D. Amendments. Amendments to this Agreement will be recommended by the Commission to member jurisdictions in accordance with the provisions of Section 4, subsection D. These shall become effective upon approval of member jurisdictions, as certified by the Commission or MACC.

- E. Effect of this Agreement. This 2002 Agreement ratifies the April, 1980, Agreement by which MACC was formed, and recognizes MACC's continuous existence since its formation. It replaces and supersedes the 1980 Agreement and all prior amendments and addenda thereto. The separate Agreement between MACC and Washington County dated October 1, 1996, as amended, remains in effect and is not affected by this Agreement.

ATTEST

Effective on the date shown below, based on signatures by the appropriate officers duly authorized to execute this Agreement on behalf of each governing body of the named jurisdictions of local government.

Bruce Crest, Administrator

Date of Original Agreement: April, 1980

Date of This Agreement: _____ (after approval by all member jurisdictions)

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Exhibit A – TCI (AT&T Comcast) Franchise Fee Allocation

This Exhibit affects the Franchise Fee revenues from the Franchise with TCI, whose parent is AT&T Comcast), or its successors.

These franchise fees are attributable to member jurisdictions. Member jurisdictions hereby make and continue allocations of these, or other, revenues for the operation of MACC for franchise administration and regulation, and for PEG Access. These allocations, specified below, cannot be increased without the unanimous consent of all member jurisdictions.

1. Allocation of Franchise Fee Revenues for MACC Administration

- a. Member jurisdictions will contribute a maximum allocation of twenty percent (20%) of franchise fee revenues collected for support of MACC administration. The Commission may decide to receive less than this allocation for these purposes.
- b. The Commission is authorized, as it deems appropriate, to enter into professional services contracts to review the Grantee's financial reports, on an annual basis or otherwise. In the event that such a review results in increased franchise payments from the Grantee, the first deduction from such payments shall be for the reimbursement of the Commission's expenses incurred under the contract for the review. The remainder of such increase shall be distributed in accordance with the most recent quarterly distribution.

2. Allocation of Franchise Fee Revenues for PEG Access

The Commission recommends that member jurisdictions contribute a minimum allocation of fifteen percent (15%) to MACC for the support of PEG Access.

Franchise fee allocations of affected member jurisdictions shall automatically renew for three-year periods on July 1, 2002, 2005, 2008, and 2011. However, if a jurisdiction gives written notice to MACC of their decision to reduce their PEG Access support below the minimum recommended allocation prior to the first day of January preceding the end of any of these three-year periods, the renewal of contributions from all members shall be suspended until such time as the Commission can review the matter and make a recommendation to the governing bodies of the member jurisdictions. If no member jurisdiction gives this notice, no action is required, and the allocations automatically renew.

Notwithstanding this allocation commitment, the appropriation of funds is subject to the annual process required of each jurisdiction pursuant to local budget law.

If a jurisdiction reduces its allocation commitment to a level below the recommended minimum, the Commission may place restrictions on the PEG Access services provided to the jurisdiction and/or its citizens.

METROPOLITAN AREA COMMUNICATIONS COMMISSION

RESOLUTION NO. 2002-08

**A RESOLUTION APPROVING A REVISED INTERGOVERNMENTAL AGREEMENT,
AND RECOMMENDING APPROVAL OF THE AGREEMENT
BY THE MACC MEMBER JURISDICTIONS**

WHEREAS, the Metropolitan Area Communications Commission, hereinafter "MACC", is an intergovernmental commission formed in April 1980 under ORS Chapter 190, with Washington County and the cities of Banks, Beaverton, Cornelius, Durham, Forest Grove, Gaston, Hillsboro, King City, Lake Oswego, North Plains, Rivergrove, Tigard, and Tualatin as current members; and

WHEREAS, the Commission has operated under the original intergovernmental agreement, with several amendments, since that time; and

WHEREAS, in 2000, the Commission determined that the Agreement needed review due to the passage of time and changes in governance and technology over the 20-year history of the Commission; and

WHEREAS, the Commission appointed a Governance Committee to review the Agreement, and to recommend any needed revisions; and

WHEREAS, the duly appointed Governance Committee met over a period of a year and presented a recommendation to the full Commission that a new Intergovernmental Cooperation Agreement be approved and submitted to the MACC member jurisdictions; and

WHEREAS, the Governance Committee also recommended the adoption of new bylaws following approval of the new Agreement, and those bylaws are scheduled for separate review by the Commission; and

WHEREAS, the Commission considered the Governance Committee's recommendation and agrees that this revised Intergovernmental Agreement should be approved and adopted by all member jurisdictions;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION:

Section 1. Agreement Approved.

The Commission hereby approves the new Intergovernmental Agreement, attached hereto, and incorporated herein by this reference, subject to all the terms and conditions contained therein.

Section 2. Recommendation to Member Jurisdictions.

The Commission hereby recommends that each of the member jurisdictions approve the Agreement by duly authorized enactment of each jurisdiction's governing body.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE METROPOLITAN AREA COMMUNICATIONS COMMISSION this 13th day of September, 2002.

A handwritten signature in black ink, appearing to read "Dean Gibbs", is written over a horizontal line. A vertical line is positioned to the right of the signature.

Dean Gibbs, Chair

Attachment: Revised MACC IGA